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Handbook on Determining Statute of Limitations

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STATUTE OF LIMITATIONS

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STATUTE OF LIMITATIONS

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STATUTE OF LIMITATIONS

110
Introduction

Appeals officers are responsible for controlling and protecting the statute of limitations for assessment on all assigned cases. The appeals officer should immediately examine all returns when cases are assigned to determine the date of expiration of the statutory period of limitations and should verify the expiration date on Form 5573, Appeals Division Control Card. Proper consents extending the period of assessment should be obtained when necessary. Although the general three-year statute of limitations rule is well known, there are some returns that do not follow the general three-year rule, and there are special events that affect the statutory period for assessments.

120
General Rules

Exhibit 200-12 in IRM 8(22)50 is a comprehensive list of the regular statute of limitations for assessments on various tax returns and applicable statute extension forms. The following is a review of various forms and their applicable statute of limitations.

121
Form 1040

121.1
General Rule

(1) The Form 1040 return is due three and a half months after the close of a taxable or fiscal year. Thus, a Form 1040 for a calendar year ending December 31, 1985, is due April 15, 1986. The statute of limitations date is April 15, 1989 (3 years from the due date). (I.R.C. §6072(a) and §6501(a).)

(2) Where the taxpayer is on a fiscal year, e.g. October 31, 1985, the return is due February 15, 1986. The statute of limitations date is February 15, 1989.

121.2
Early Return

When a return is filed early (before the due date), the statute of limitations is computed from the due date. Thus, if a Form 1040 for a calendar year ending December 31, 1985, is filed on March 15, 1986, the due date is April 15, 1986. The statute of limitations date is April 15, 1989. (I.R.C. §6501(b)(1).)

121.3
Late Return

(1) If a return is filed after the due date, the statute of limitations is computed from the date the return is filed. If a return is due on April 15, 1985 (calendar year 12/31/84), and is filed on May 12, 1985, the statute of limitations date is three years from May 12, 1985, or May 12, 1988. (I.R.C. §6501(a).)

(2) The "date filed" is defined as the date received by the Service. On an original return, the appeals officer should use the earliest date stamped on the face of the return by either the district director or the service center. Where the appeals officer does not have an original return, the date filed may be determined from the transcript of account. The date received by the service center may be determined by deciphering the Julian Date in the Document Locator Number or using the service center remittance posting.

122
Form 1041

As with Form 1040, the Form 1041 return (fiduciary) is due three and a half months after the close of a taxable or fiscal year. The rules governing early and late returns (see Text 121.2 and 121.3 in this Handbook) also apply to Form 1041.

123
Form 1120

The Form 1120 return (corporate) is due two and a half months after the close of a taxable or fiscal year. (I.R.C. §6072(b)). The rules governing early and late returns (see Text 121.2 and 121.3 in this Handbook) also apply. Thus, the statute date is determined as follows:

Tax Period	Due Date	Date Filed	Statute Date
FY 8107	101581	101581	101584
CY 8212	031583	031083	031586
CY 8012	031581	040981	040984

124
Form 706

124.1
Estate - Date of Death Occurring after 12/31/70

(1) The Form 706 return is due 9 months after the date of death. (I.R.C. §6075(a).) If no date corresponds to the date of death, the last day of the ninth month is the due date. The rules governing early and late returns (see Text 121.2 and 121.3 in this Handbook) also apply.

Tax Period	Due Date	Date Filed	Statute Date
DOD 062080	032081	032081	032084
DOD 123181	093082	093082	093085
DOD 111483	081484	071585	071588

(2) The statute date for this return may not be extended (I.R.C. §6501(c)(4)).

125
Form 709

125.1
Gift - 12/30/70 through 1/1/82

Returns are filed quarterly (calendar year) and are due 2 months and 15 days following the end of the quarter. The

rules governing early and late returns also apply.

Tax Period	Due Date	Date Filed	Statute Date
QTR 8512	031586	030186	031589
QTR 8406	091584	090284	091587

125.2
Gift - Prior to 1/1/71 or After 12/31/81

Returns are filed on a calendar year basis and are due by April 15. (I.R.C. §6075(b).) The rules governing early and late returns also apply.

Tax Period	Due Date	Date Filed	Statute Date
8512	041586	041086	041589

126
Form 720

Returns for excise taxes are filed quarterly (calendar year) and are due the last day of the month following the end of the quarter. The rules governing early and late returns also apply.

Tax Period	Due Date	Date Filed	Statute Date
QTR 8503	043085	041585	043088
QTR 8609	103186	103086	103189
QTR 8406	073184	093084	093087

127
Form 941

Returns are filed quarterly (calendar year) and are due the last day of the month following the end of the quarter.

The rules governing early and late returns also apply. The statute date is 3 years from April 15 of the succeeding year.

Tax Period	Due Date	Date Filed	Statute Date
QTR 8103	043081	042981	041582+3=041585
QTR 8112	013182	011582	041582+3=041585
QTR 8209	103182	100182	041583+3=041586
QTR 8206	073182	081582	041583+3=041586

128
Form 940

Returns (FUTA) are filed on a calendar year basis and are due January 31 of the next calendar year. The rules governing early and late returns also apply. The statute date is three years from January 31.

Tax Period	Due Date	Date Filed	Statute Date
8512	013186	013186	013189
8612	013187	031287	031290

129
Information Returns

129.1
Forms 990, 990-A, 990-PF

These exempt organizations returns are filed on a taxable year basis and are due 4 months and 15 days after the close of the taxable year. The statute of limitations date is 3 years after the due date of the taxable return.

12(10)
Transferee Liability

(1) Transferee liability may be assessed one year beyond the statute of limitations date of the transferor.

(2) Transferee liability can best be explained by an example. Mr. Jones' 1981 Form 1040 is due three and a half months after the close of the taxable year.

Transferor/ Transferee	Tax Period	Due Date	Statute Date
Jones (transferor)	8112	041582	041585

Assume a situation occurs whereby Mr. Smith is a transferee and there are subsequent transferees (an heir, legatee or devisee of Mr. Jones). The transferee liability for statute purposes is as follows:

Transferor/ Transferee	Tax Period	Due Date	Statute Date
Smith (transferee)	8112	041582	041585+1yr= 041586

(3) The statute date cannot be extended beyond three (3) years of the original statute date for the transferor.

130
Reserved

140
Items Which Affect the Statute of Limitations

141
Notice of Deficiency

(1) The issuance of a notice of deficiency extends the period for making an assessment. The notice of deficiency allows the taxpayer 90 days to file a petition with the U.S. Tax Court for a redetermination of the tax. This 90-day period is extended to 150 days when the notice is mailed to a taxpayer outside the United States.

(2) The issuance of a notice of deficiency begins a period in which the Commissioner is prohibited from making an assessment (I.R.C. §6213(a)). I.R.C. §6503 suspends the running of the period for making an assessment for 90 days and adds 60 days to make an assessment whenever a notice of deficiency is issued. This 90 days is added to the end of the "normal" statute date plus an additional 60 days. Thus, every day for which the assessment is prohibited is "tack-on-time" to the regular statute date plus 60 days additional "tack-on-time".

(3) For a Form 1040, this "tack-on-time" is determined as follows:

Tax Period	Due Date	Statute Date	90-Days Expires	60-Days Expires
8512	041586	041589	071489	091289

(4) The Ninth Circuit recently found that a notice of deficiency was not mailed to the taxpayer's last known address because the Service did not conduct a computer search on the spouse's SSN. Appeals officers should be aware of this ruling and the need to check on both the taxpayer and spouse SSN's. (Wallin vs. Commissioner, 744 F2d 674)

142
Situations that Change the Statute of Limitations Due to the Issuance of a Notice of Deficiency

142.1
Taxpayer Defaults

(1) If a notice of deficiency is issued and the taxpayer does nothing, the tax cannot be assessed until the 90-days (or 150-days if outside the U.S.) has expired. The 90-days, plus 60 days, are added to the regular statute date for purposes of assessing the deficiency.

(2) Example: The taxpayer files a 1981 individual income tax return on April 15, 1982. The regular three-year statute of limitations date is April 15, 1985. On January 2, 1985, a notice of deficiency is issued. Ninety days later, on April 2, 1985, the notice of deficiency expired and the taxpayer did not file a petition with the U.S. Tax Court. The assessment was prohibited for the 90-day period between January 2, 1985, and April 2, 1985. Therefore, the 90-day assessment prohibition period plus 60 days is added to the regular April 15, 1985, statute of limitations date. The period for assessing the deficiency expires on September 12, 1985.

Tax Period	Due Date	Statute Date	90-Day Letter Issued	60-Days Expires
8112	041582	041585	010285	091285

142.2
Taxpayer Agrees

(1) If the taxpayer agrees to the deficiency in the notice of deficiency (or other settled amount) during the 90-day period, the 90-day assessment prohibition ends when the executed agreement form is received. (Rev. Rul. 66-17, 1966-1 C.B. 272.) The "tack-on-time" to the regular statute of limitations date is the number of days between the issuance of the notice of deficiency and receipt of the agreement form, plus 60 days.

(2) Example: Using the same facts in the example in Text 142.1(2) of this Handbook, except that the taxpayer signs the agreement form and you receive it on January 16, 1985. The "tack-on-time" is the fourteen days between January 2, 1985, and January 16, 1985, plus 60 days. The fourteen days and 60 days are added to the statute of limitations date (041585). Thus, the period for assessing the deficiency expires on June 28, 1985.

Tax Period	Due Date	Statute Date	Date Waiver Received	90-Day Letter Issued	Statute Expires
8112	041582	041585	011685	010285	062885 (041585+ 14+60days)
			14 days		

(3) Filing the waiver, Form 870, changed the statute expiration from 9/12/85 to 6/28/85.

142.3
Taxpayer Files Petition with U.S. Tax Court

(1) In docketed cases, no assessment can be made between the date the notice of deficiency is issued and the date the Tax Court decision becomes final. The "tack-on-time" to the regular statute of limitations date is the number of days between the date of issuance of the notice of deficiency and the date the Tax Court decision becomes final (90 days after it is entered), plus 60 days.

(2) Example: Using the same facts in the example in Text 142.1(2) of this Handbook, except the taxpayer files a petition with the U.S. Tax Court on February 1, 1985. The Court's decision becomes final on August 14, 1985. The "tack-on-time" is the 224 days between January 2, 1985, (date of issuance of notice of deficiency) and August 14, 1985, (date the Court's decision became final), plus 60 days. The period for assessing the deficiency expires on January 24, 1986.

Tax Period	Due Date	Statute Date	SND Issued	Final Tax Court Decision	Statute Expires
8112	041582	041585	010285	081485	012486 (041585+ 224+60days)
			224 days		

143
Fraud

The tax may be assessed at any time on a fraud case (I.R.C. §6501(c)(1) and (2)). The government has the burden of proof to prove fraud by "clear and convincing evidence" (I.R.C. §7454(a)). If the government does not prevail on the fraud issue, the ability to assess the tax at any time is lost.

144
No Return Filed

(1) The tax may be assessed at any time on a case when no return was filed (IRC §6501(c)(3)).

(2) A "substitute for return", prepared by the Service, under I.R.C. §6020, is treated as no return filed. If a taxpayer signs a "substitute for return", it becomes a regular return.

145
25% Omission of Gross Income

(1) If the tax return shows an omission of gross income in excess of 25% of the gross income shown on the return, the

period for making an assessment is 6 years from the time the return was filed (IRC §6501(e)). The burden of proof to show the omission of gross income is on the government.

(2) Example: A taxpayer files a 1982 Form 1040 on April 15, 1983. The regular 3 year statute of limitations expires on April 15, 1986. The taxpayer reported gross income of $80,000.00. During the examination, the District Director determined that the correct amount of gross income was $101,000.00. While the $21,000.00 omission of gross income is 21% of the correct gross income, it is 26% of the gross income reported on the return. In this case, the 6 year statute is available.

Tax Period	Due Date	Statute Date	Statute Expires
8212	041583	041586	041589

146
Other

In addition to the items which affect the regular statute of limitations dates, there are carryback provisions which keep returns open which would otherwise be closed. These provisions generally keep the otherwise closed returns open only for the specific carryback. For example, under certain conditions, a foreign tax credit may be carried back to an otherwise closed year only to allow the foreign tax credit. These carryback rules for net operating loss and carryback credits (e.g. foreign tax credit, investment tax credit) are found in IRC §6501.

150
Special Rules for Partnerships

The new rules under TEFRA substantially change the statute of limitation provisions for partnerships. Under TEFRA, partners may have multiple statutes of limitations on various assessments to one return.

151
Pre-TEFRA

Under the pre-TEFRA rules the statute of limitations for partnership adjustments expired in accordance with the statute of limitation on each partner's income tax return. Therefore, the government had to obtain a consent, Form 872 or 872A, from each partner to extend the statute of limitations on the entire partnership adjustments. A notice of deficiency was issued to each partner, and it included all adjustments to nonpartnership items (i.e., encompassed all adjustments to the individual partner's income tax return). Each partner was entitled to file suit in Tax Court, District Court, or the Claims Court. It follows that one partnership RAR sometimes resulted in numerous separate court cases.

152
TEFRA

(1) Under TEFRA, the tax treatment of items of partnership income, loss, deductions, and credits will be determined at the partnership level. The TEFRA provisions are applicable to partnerships with taxable years beginning after September 3, 1982. A partnership item is any item "more appropriately determined at the partnership level" in accordance with future regulations (I.R.C. §6231(a)(3)). A nonpartnership item is any item which is not a partnership item.

(2) The new TEFRA rules shall not apply to "small partnerships". A "small partnership" has 10 or fewer partners each of whom is a natural person (other than a nonresident alien) or an estate, and each partner's share of each partnership item is the same as his/her share of every other item, (i.e. there are no special allocations). A husband and wife shall be treated, for the purpose of this definition, as one partner.

(3) The tax matters partner is any general partner designated by the partnership. If there is no general partner, then the partner having the largest profits interest at the close of the taxable year. In case of equal interests, then the partner whose name would appear first in an alphabetical listing shall be the tax matters partner. Under special circumstances, the Secretary may designate someone as the tax matters partner.

153
General Rule

(1) The statute of limitations for assessment of deficiencies on partnership items expires three years after the date the partnership return is filed, or the due date of such return (determined without regard to extensions), whichever is later.

(2) The statute of limitations period may be extended by agreement:

(a) with respect to any partner, by an agreement entered into by the Secretary and such partner, and

(b) with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement).

(3) However, with regard to any partner, such agreement must expressly provide that it applies to tax attributable to partnership items.

154
Fraudulent Return

If any partner signs or participates in the preparation of a fraudulent return, the government may assess a deficiency against such partner at any time. Other partners to a fraudulent return will be subject to a 6 year statute of limitations.

155
Substantial Omission of Income

If a partnership omits from gross income an amount which is in excess of 25% of the gross income stated in its return, then the statute of limitations for partnership items shall be 6 years.

156
No Return

In the case of failure to file a partnership return, the tax attributable to partnership items may be assessed at any time.

157
I.R.C. §6020 Return

A return filed by the Secretary under I.R.C. §6020 (substitute for return) is not a return for the purpose of starting the statute of limitations.

158
Final Partnership Administrative Adjustment

(1) No assessment of a deficiency may be made prior to the close of the 150th day after the government issues a notice of a Final Partnership Administrative Adjustment (FPAA) and, if a proceeding is begun in the Tax Court, until the decision of the court has become final.

(2) If the government mails one FPAA to a partner, the government may not mail a second FPAA to that partner with respect to the same taxable year.

(3) The notice of deficiency (FPAA for a TEFRA partnership) is issued to each partner entitled to notice, but it is limited to partnership items. All nonpartnership items are handled in separate proceedings for each individual partner. If, for example, one individual invests in three partnerships, then for the same tax period he/she may have: (a) four statute of limitations dates on assessments, (b) four statutory notices, and (c) four separate court cases.

(4) After an FPAA is mailed to the tax matters partner, the running of the statute of limitations shall be suspended for 150-days. If an action is brought during such period, the statute of limitations is suspended until the decision of the court becomes final, and for one year thereafter. If a petition is defaulted, the government has a one year "tack-on-period" to make the assessment.

158.1
Petition by Tax Matters Partner

Within 90 days after notice of a FPAA is mailed to the tax matters partner, the tax matters partner may file a petition for readjustment of the partnership items with:

(a) the U.S. Tax Court
(b) the District Court of the United States for the district in which the partnership's principal place of business is located, or
(c) the U.S. Claims Court.

158.2
Petition by Other Than Tax Matters Partner

If a petition is not filed by the tax matters partner, then any notice partner or notice group has 60 days (after the 90-days) to file an action in any of the above courts.

(a) If more than one action is brought, then the first action filed in the Tax Court shall go forward.

(b) If no action was brought in Tax Court, then the first action in any other court shall go forward. The party who filed such action (in District Court or Claims Court) shall submit a deposit in the amount of his/her tax in issue. The government may then assess and collect the tax in issue under the FPAA against all the remaining partners.

(c) All adjustments to partnership items are consolidated into one court case. (Other cases will be dismissed).

(d) Each person who was a partner during the year (including the tax matters partner) shall be treated as a party to the action that goes forward, and be allowed to participate in that proceeding.

158.3
Settlement Agreements

(1) If the government enters into a settlement agreement with any partner before the FPAA is issued to the TMP, all other partners who request a consistent settlement agreement shall be offered one. A consistent settlement agreement must be requested by any partner other than the TMP within 150 days after issuance of a FPAA.

(2) The government is entitled to make two different settlement offers; one in nondocketed status and one in docketed status. However, once the case is docketed, taxpayers may no longer elect any settlement offer made by the government prior to issuance of the FPAA.

160
Consents To Extend the Statute of Limitations

161
Consent Forms

In addition to the previously mentioned changes to the regular statutory periods of limitations, taxpayers may agree to extend the statutory period of limitations by consent forms.

(1) Form SS-10, Consent to Fix Period of Limitation on Assessment of Employment Taxes.

(2) Form 872, Consent to Extend the Time to Assess Tax.

(3) Form 872-A, Special Consent to Extend the Time to Assess Tax.

(4) Form 872-B, Consent to Extend the Time to Assess Miscellaneous Excise Taxes.

(5) Form 872-N, Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership.

(6) Form 872-O, Special Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership.

(7) Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership.

(8) Form 872-Q, Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation.

(9) Form 872-R, Special Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation.

(10) Form 872-S, Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation.

(11) Form 2750, Waiver Extending Statutory Period for Assessment of 100-Percent Penalty.

(12) Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary.

162
Preparation of Consents

(1) Generally, the extension of the statutory period should be limited to the additional time required to close the case, plus 120 days for assessment. In Joint Committee cases, consents should be secured extending the assessment period to provide at least six months after transmitting the case to the National Office. Appeals' procedures for consents are found in IRM 8230.

(2) Form 872-A is provided to relieve taxpayers and the Service from the inconvenience of obtaining renewal consents, and to provide a means of restricting the period of limitations to the minimum time required for Service considerations.

(3) Form 872-A (revision July 1979 or later) provides that the period of limitation for assessment of tax will be extended to a date not more than 90 days after:

(a) receipt by the Service office considering the case of Form 872-T from the taxpayer;

(b) mailing by the Service of Form 872-T to the taxpayer; or

(c) the expiration of 90 (150) day period of the mailing of the notice of deficiency.

(4) Except for the mailing of a notice of deficiency, written notification by the Service to the taxpayer of termination of Service consideration can be made only by using Form 872-T, and can be signed only by a Chief or Associate Chief. Do not use Form 872-T in a fully agreed deficiency case in which a Form 872-A (revision July 1979 or later) was secured. In those cases, the statute of limitations generally will terminate immediately after the assessment of an increase in tax.

(5) Written notification to the Service from the taxpayer of an election to terminate Form 872-A should be made on Form 872-T and mailed in accordance with instructions on the form. When the taxpayer is sent a copy of an executed Form 872-A, the transmittal letter should explain that a Form 872-T must be used to terminate Form 872-A, and that it may be requested from the appeals officer.

(6) One consent form may be used for more than one taxable year. When one form is used to obtain consents for more than one year, all years covered will be inserted in the body of the consent following "period(s) ended".

(7) The taxable year(s) or period(s) covered by the consent must be stated in full, showing the month, day, year (e.g. "December 31, 1985").

(8) A consent covering the first or last return of a taxpayer, or a short period, must show the dates of the beginning and end of the fractional period of the year. For example, in the case of a decedent who died on September 1, 1984, the consent is to read, "For the taxable year January 1, 1984 to September 1, 1984". It is not proper to use the word "period" nor the word "ended" when preparing consents for a fractional part of a year. The word "ended", if printed on the form, should be deleted.

(9) Consents must be prepared in duplicate and should be typewritten with no abbreviations unless the legal name of a corporation has abbreviations. Consents should be free of erasures and alterations. Erasures and alterations generally are not permissible regarding significant items such as the year or period covered and the extended date. In emergency situations, such alterations may be accepted if the initials of all the signers appear in the margin opposite the change.

(10) Each copy of the consent must be signed as an original.

(11) It is unnecessary to delete from the forms inapplicable words such as "taxpayer (or taxpayers)" and "District Director".

(12) The original consent, when properly executed by all parties, will be attached to the back of the first page of the return for the earliest year covered by the consent. A copy will be similarly associated with all other returns covered by the consent.

(13) The period for assessment may be extended by consent restricted to one or more issues. See IRM 8233.(12) for details of appropriate circumstances and procedure.

162.1
Impact of Statute of Limitations on Form 872 versus Form 872-A

Form 872 provides a "tack-on" time for the unexpired term as of the date of the notice of deficiency. (See Text 140-148 of this handbook.) In contrast, Form 872-A terminates on the date of a valid notice of deficiency; the government has only 60 days to complete a subsequent assessment.

163
Individuals

163.1
Name

(1) The consent should be in the name of the taxpayer(s) showing first name, middle initial, and last name. The consent should be signed in the same name as the original tax return.

(2) A consent covering a joint return should show the complete name of both the husband and the wife; for example, "John Doe and Mary Doe".

(3) Abbreviations in the signatures, such as "Geo.," "Chas.," "Jas.," "Wm.," "Theo.," etc., should not be used in the body or signature of the consent unless they are used in both the name and signature sections of the return.

(4) Where the prefix "Mrs.," "Dr.," etc., is included in the name or signature on a return, the same prefix should be included in the name contained in both the body and signature of the consent.

(5) A consent for an individual whose name has been changed subsequent to the filing of the income tax return should be prepared and be signed with both names as follows: John Brown and Mary Doe, formerly Mary Brown.

(6) A consent covering a return filed for an incompetent person will show the name of the taxpayer, his status, and guardian's name and title; for example, "John Doe, Incompetent, by Richard Roe, Guardian," and must be signed in like manner. A copy of the court document appointing the guardian, together with Form 56, must accompany the consent.

163.2
Signature

(1) It is preferable to have the taxpayers sign with a pen, but pencil signatures are acceptable.

(2) If a person cannot write, a mark (X) is acceptable as a signature. The name should be written near the individual's mark by a witness. The mark must be witnessed by two persons whose signatures should be placed below the mark.

(3) A consent for an individual in bankruptcy should be signed by the individual.

163.3
Joint Return

(1) If a joint return is filed, both spouses must execute the consent. If they are subsequently separated or divorced, a consent may be obtained from each individual. However, each consent must be prepared containing the names of both husband and wife, or a consent may be jointly executed by the divorced or separated spouses.

(2) If a return was filed in the names of both the husband and the wife, and was signed by either or both, or if the return was filed in the name of one spouse but was signed by both, the consent should be prepared in the names of both spouses and signed accordingly. This is true even though statements as to the marital status on the return are blank or in the negative, or regardless of whether or not the examination discloses the return to be a single or jointly filed return. If a return is made out in the name of one spouse and states it is a single return but income or deductions of both spouses are included, prepare a consent and obtain the signatures of both individuals.

(3) If a return is made out in the name of one spouse but statements as to the marital status indicate that the return is a joint return, prepare a consent in the names of both individuals and secure both signatures whether or not income or deductions of one or both spouses are included in the return.

163.4
Minor

(1) In the case of a minor, the name and status of the minor and the name and title of the guardian should be typed on the

consent and must be signed accordingly. A copy of the court document evidencing appointment of the guardian and Form 56 will accompany the consent. Form 56 and court documents will not be necessary if the agent has determined that the guardianship is still in effect.

(2) A custodian under the Uniform Gifts to Minors Act who has signed the return, and still has custody of the minor's property, may execute a consent for the minor.

164
Corporations

164.1
Name

(1) A consent should bear the correct name of the corporation as it appears on the articles of incorporation. The corporate name should be typed in by the government above the corporate officer's signature block.

(2) The consent should be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation who are empowered under the laws of the state of incorporation to sign for the corporation. While no longer required, inclusion of the corporate seal is desirable because it is prima facie evidence that the consent was duly executed and signed by a person authorized to act for the corporation. It is important that the title of the signing officer be shown. Any officer may sign a consent whether or not that person was the same individual who signed the return.

(3) When a corporation changes its name and continues to operate under its old articles of incorporation, both corporate names should appear in the body of the consent and the signature completed as follows: "John Doe Company, formerly Richard Roe Company".

(4) The proper person to execute a consent for a corporation in bankruptcy is a receiver or trustee in bankruptcy. A copy of the court order appointing the receiver or trustee should accompany the consent. In involuntary dissolutions, state law must be consulted to ascertain the proper party to execute a consent.

164.2
Consolidated Return

For consolidated income tax returns, one consent will cover all companies included in the consolidated income tax return. Such consents will be prepared in the name of the parent corporation, followed by the words "and affiliated companies," "consolidated subsidiaries" or comparable words. The signature of the parent corporation only should be affixed to the consent.

164.3
Successor Corporation

(1) As a general rule, a successor corporation in a merger or consolidation becomes primarily liable for the debts of the merged or consolidated corporations.

(2) It is important that the agreement of merger, or agreement of consolidation, be examined to be sure that there are no limitations or exclusions on the successor's liability for the predecessor corporation's taxes. In a merger or consolidation effected under the general rule, the consent should be executed by the successor corporation in the following manner:

> XYZ Corporation, Successor in Interest to ABC Company
> By Joe Doe, President

(3) Sometimes it is difficult to determine whether the recipient of the assets is a successor-in-interest or a transferee. It is unnecessary to make this determination if a Form 2045, Form 977 (as transferee) and Form 872 (as successor in interest) are obtained from the recipient(s). (See section on transferor-transferee cases).

164.4
Dissolved Corporation

(1) In the case of a dissolved corporation, the question of who may execute a valid consent depends on the law of the state of incorporation.

(2) Accordingly, in states where the dissolved corporation continues in existence for purposes of winding up its affairs,

any authorized officer may sign a consent during this period. In states where a corporation's existence is terminated by dissolution, no one may sign a consent for the corporation. However, the shareholders liable under I.R.C. §6901 as transferees may sign consents for their own liabilities.

165
Transferor-Transferee Cases

(1) General procedures and instructions for processing, managing, and obtaining consents in transferor-transferee cases are contained in IRM 8(19)00 and 4582. Careful reading of these procedures discloses that extra precautions must be taken at times to ensure that the proper form of consent is obtained from the proper party.

(2) Generally, where additional tax is determined to be due from a transferor, such additional liability should be assessed or ninety-day letter issued to the transferor before the statute expires against the transferor. The exception to this rule is where an agreement (Form 2045) outlined in paragraph 4582.2(2) of Internal Revenue Manual has been procured from each transferee.

(3) I.R.C. §6901(c) provides that assessment of transferee liability may be made within one year after the expiration of the period of limitations for assessment against the transferor. To extend the statute of limitation for the transferee beyond the period fixed by I.R.C. §6901, Form 977 should be used. Receipt of Form 977 from the initial transferee may not be relied upon as extending the statute of limitations for succeeding transferees.

(4) A successor corporation in a merger or consolidation is not a transferee. In such cases a consent on Form 872 must be executed by the successor corporation before the expiration of the period of limitations for assessment against the merged or consolidated corporations.

(5) The problems that may arise in extending the statute of limitations on assessment of taxes due from dissolved corporations will be evident from the Tax Court's decisions in: Wheeler's Peachtree Pharmacy, Inc., 35 TC 177 (1960), and Badger Materials, Inc., 40 TC 725 and 1061 (1963). Also, See

Turnbull, Inc., 42 TC 582 (1964), and Missile Systems Corp. of Texas, TC Memo 1964-212, for an explanation of the difficulties encountered in cases involving statutory mergers or consolidations.

(6) Use of Form 2045 in transferor-transferee cases is limited to corporate transferors and generally only when the corporation is fully liquidated and dissolved. Futhermore, even if a dissolution has taken place, this form should not be used if such dissolution was in connection with a statutory merger or consolidation or change in identity because it has been held that the new or surviving corporation is a successor to the old and, as such, primarily liable for its debts.

(7) Form 2045 does not extend the statute of limitations on assessment. It is a bilateral agreement whereby the Commissioner agrees to the discontinuance of action against the corporate transferor in return for an admission as a transferee, the burden of proof of which is otherwise on the Commissioner. This form, if used, must be obtained prior to expiration of the statute of limitations for assessment against the transferor, and it must be obtained for each transferee executing a consent.

166
Decedents

(1) A decedent and his/her estate are separate and distinct taxable entities. Consequently, there is a difference in the manner in which consents are to be prepared.

(2) A consent covering a return of a deceased person which is filed by an executor or administrator, should be accompanied by a Form 56, and a copy of letters testamentary, unless the letters testamentary (or administration) are already on file. The completed Form 56 should be attached to the reverse side of the first page of the return beneath the consent.

(3) Where several executors are appointed under a will, the names of all must be entered on both the consent and on Form 56; both forms must be signed by all of the executors, even if all have not signed the return. The exception to this rule is when the will states that the acts of one or more executors are binding on all.

(4) A consent covering a return filed by a taxpayer while living, but subsequently deceased, should show the name of the taxpayer, and the name and title of the fiduciary. For example, "John Doe (deceased) by Mary Doe, Executrix". It may be signed in like manner, or a signature reading "Mary Doe, Executrix under the Will of John Doe (deceased)".

(5) A consent covering a return for a deceased person filed by an executor or administrator should read and be signed as in the preceding paragraph, using the appropriate title of the fiduciary.

(6) If a joint return has been filed and one spouse is deceased for whom an executor has been appointed, the consent should contain the names of the taxpayers and the name and title of the fiduciary. For example, "John Doe (deceased) by Citizens National Bank, Executor, and Mary Doe". It should be signed in like manner by both the executor and the living spouse.

(7) Where a joint return was filed by husband and wife, the period of limitation for assessment of a tax liability cannot be curtailed as to the surviving party to a joint return by a request of the fiduciary for the estate for a prompt assessment under I.R.C. §6501(d) of the Code. A consent may be taken from the fiduciary extending the expiration date under I.R.C. §6501(d).

(8) A consent is not acceptable on behalf of a decedent where a fiduciary was discharged. The same is true where a joint return was filed and no fiduciary was appointed. If a decedent dies intestate and an administrator is not appointed, no one may sign a consent for the decedent. However, the heirs, liable under I.R.C. §6901 as transferees, may sign consents for their own liabilities (Rev. Rul. 83-41, 1983-1 C.B. 349).

(9) If we have a surviving spouse/joint tenancy situation but separate returns were filed, we must secure a Form 2045 from the surviving spouse and actually follow transferee procedures.

(10) The statute of limitations on an Estate Tax Return, Form 706, cannot be extended.

167
Fiduciary Income Tax Returns

(1) A consent covering the income tax return (Form 1041) of an estate or trust should include the name of the estate or trust and the name and title of the fiduciary. It should be signed in like manner, for example:

a. "Estate of John Doe (deceased) by Richard Roe, Executor"

b. "John Doe Trust by Richard Roe, Trustee"

(2) If there are multiple trustees, any one of the trustees may sign a consent, regardless of whether that individual signed the return.

(3) A consent covering the return of an estate or trust should be accompanied by Form 56, and a copy of letters testamentary (or administration) or trust agreement, unless the letters testamentary (or administration) or trust agreement are already on file. The completed Form 56 should be attached to the reverse of the first page of the return beneath the consent.

(4) When an estate or trust has been closed and an executor or trustee discharged, a transferee agreement should be obtained from each of the beneficiaries.

168
Miscellaneous Provisions

168.1
The Six-Year Statute

The six-year statute of limitations under I.R.C. §6501(e) for omission of 25 percent of gross income and I.R.C. §6501(f) for failure of a personal holding company to file specific schedules may be extended by a consent prepared in the usual manner. In such cases, insert above the first line of the consent - "Under the provisions of Section 6501 ((e) or (f)) of the IRC".

168.2
Request for Prompt Assessment

(1) The 18-month period created by a request for prompt assessment under the provisions of I.R.C. §6501(d) may be extended by a consent prepared in the usual manner. When a joint return is filed by husband and wife, the period of limitation for assessment of a tax liability cannot be curtailed as to the surviving party of a joint return by a request of the fiduciary for the estate for a prompt assessment under I.R.C. §6501(d).

(2) A consent may be signed by the taxpayer's attorney or agent provided such action is specifically authorized by a power of attorney which, if not previously filed with the Service, must be secured before execution of the consent. Such persons may use Form 2848, Power of Attorney, for this purpose, but this form is not mandatory. An unenrolled return preparer, as defined in Circular 230, is not authorized to execute consents on behalf of a taxpayer.

(3) When a consent is executed by an attorney or agent, it is preferable that he or she sign the taxpayer's name on the signature line followed by his or her own signature and description of his capacity underneath it. It is not the general policy to procure consents in cases involving claims for refund or relief. However, if it appears that an adjustment may offset the claim and create a deficiency, a consent would be necessary to protect the government's interest.

(4) A consent covering a return by an association will be accompanied by a copy of the articles of agreement, if not previously filed. The name of the association will be shown on the consent. The signature will also show the name of the association and, in addition, the names and titles of the signers.

(5) In each gift tax case in which a husband and wife have elected to split their gifts pursuant to I.R.C. §2513, two sets of consents shall be prepared, in duplicate, on Form 872-G, for each taxable year. One set should be prepared for the husband as donor with the wife as consenting spouse, and the other set vice versa. The signature of both spouses should appear on all Forms 872-G in each set prepared.

168.3
Consent to Extend Collection Period of Limitation

I.R.C. §6502 provides that the statutory period for collection is six years from the assessment date. It is unlikely, although possible, for Appeals to be working a case involving a liability which had been assessed for over five years. When such a situation exists, Appeals should contact the District Collection function. The contact should be made approximately nine months before expiration of the statute. You should notify Collection that prompt action is necessary unless collection has been effected, a bond filed, or a waiver notification or action is received by the appeals officer. Follow-ups should be made at two-month intervals.

168.4
Consents for Employment Tax Cases

Forms SS-10, 872, or 872-A may be used to extend the period for assessment of employment taxes, including FICA tax on tip income. If Form 872 or 872-A is used concurrently for an individual income tax and tip income case, the description of the kind of tax must identify both.

EXHIBIT 1

STATUTE OF LIMITATIONS QUESTIONS

The following questions and exercises will serve as a review in determining statutes of limitations.

1. The taxpayers timely filed the following returns. When does the statute of limitations for each return expire?

	Form	Tax Period Ended	Statute Date
(a)	1040	12/31/79	
(b)	1120	2/28/80	
(c)	1065	12/31/83	
(d)	706	DOD 4/3/81	
(e)	709	Gift made on 1/15/82	
(f)	941	12/31/80	
(g)	940	12/31/80	
(h)	1041	5/31/82	

(i)	Form	Tax Period Ended	Date Filed	Statute Date
	1040 Mr. I-Transferor	8312	022784	
	1040 Mr. R-Transferee of assets of Mr. I	8312	031584	
	1040 Mr. S-transferee of assets of Mr. R.	8312	010284	

2. ABC Corporation files a return, Form 1120, for the calendar year 1980. Determine the statute of limitations assuming, alternatively, the following facts:

   a. The return was filed on 3/13/81.

b. The return was filed on 4/2/81, and no extension was granted.

c. The return was filed on 4/2/81, and an extension granted to 6/15/81.

d. The return was filed on 8/22/82, and an amended return filed on 8/21/85.

3. ABC Corporation failed to file an income tax return for calendar year 1980. The District Director prepared a substitute for return under Section 6020 for ABC Corporation. When does the statute of limitations expire?

4. ABC Corporation failed to file an income tax return for the calendar year 1980. The District Director prepared a return under Section 6020 on July 1, 1981, and forwarded the case unagreed to Appeals. ABC Corporation filed a return, Form 1120, on August 1, 1981, with the Service Center. When does the statute of limitations expire?

5. Mr. Sam Baker died on February 12, 1980. The estate tax return, Form 706, was timely filed. The return was examined, and the unagreed deficiency sent to the appeals office. The estate assets were distributed to the beneficiaries, except for a reserve to pay the potential deficiency. The appeals officer obtained and executed a consent, Form 872, extending the statute of limitations date to June 30, 1984. What is the correct statute of limitations date?

6. ABC Corporation obtained an extension to file its 1980 calendar year return on or before June 15, 1981. The return was mailed (and postmarked) on June 12, 1981, and received by the Service Center (and stamped received) on June 17, 1981. What is the correct statute of limitations date?

7. The appeals officer makes a clerical error by placing the wrong statute of limitation expiration year on the inventory card. How may this error be discovered before the statute of limitations expire?

8. A case file contains a "dummy return", Form 1040, for calendar year 1980. When does the statute of limitations expire?

9. The appeals officer receives a power of attorney, Form 2848, prepared as follows:

John Jones, Inc.
A Professional Corp.

The consent, Form 872-A, is signed by John Jones on behalf of the taxpayer. Is the consent valid?

10. Mr. Thomas filed an individual income tax return for calendar year 1979 on April 10, 1980. On his 1979 return, Mr. Thomas reported gross income of $100,000. On August 5, 1985, the District Director determined that Mr. Thomas failed to report $26,000 of gross income. What is the latest date that the government could assess a deficiency against Mr. Thomas?

11. ABC Corporation filed a timely calendar year 1981 return. The District Director determined that the taxpayer is subject to the accumulated earnings tax, Section 531. The unagreed case was received by the appeals officer on 8/15/84. What is the appropriate inventory card statute date?

12. Under what circumstances should an appeals officer use an 872 instead of an 872-A?

13. In a docketed case only one spouse petitioned. Who is responsible for assessment against the nonpetitioning spouse?

14. When should the appeals officer secure a restricted consent?

15. The District Director determined that:

(a) $10,000 of gross income shall be shifted to an earlier year, and

(b) taxable income is increased by a $40 agreed adjustment in the latest year.

	Increase (Decrease) Taxable Income	
	1980	1981
Gross income	$10,000	($10,000)
Other agreed adjustments	-0-	40
Net adjustments per District Director	$10,000	($ 9,960)

P-8-13 states that consents "shall be secured only when they are necessary to protect the government interest".

Should the appeals officer execute a Form 1267 allowing the statute to expire in 1981?

16. Mr. Lee files a timely calendar year individual 1980 return. On April 10, 1984, Appeals issues a statutory notice. The signed waiver, Form 870, is received by Appeals on April 25, 1984. When does the statute for assessment expire?

17. The appeals officer is prepared to issue a statutory notice on a "tip income" adjustment (FICA). Will the statutory notice keep the statute open on the entire assessment?

18. The appeals officer is preparing a statutory notice for a Form 1040 where the taxpayer erroneously claimed excess withholding credit. When should the government assess the amount of erroneously claimed withholding?

19. Mrs. Vanderbilt filed an individual tax return for 1980 on April 15, 1981. On April 15, 1983, a statutory notice of deficiency was mailed to Mrs. Vanderbilt. Mrs. Vanderbilt defaulted. What is the latest date the Commissioner could assess a deficiency against Mrs. Vanderbilt?

20. Mrs. Jones filed an individual income tax return for 1980 on April 15, 1981. On April 14, 1984, the government issued a statutory notice of deficiency. Mrs. Jones petitioned and a stipulated decision was entered on April 15, 1985.

    What is the latest date that the government could assess the applicable deficiency against Mrs. Jones?

21. Mr. Carpenter filed an individual income tax return for 1980 on June 15, 1981. No extension of time for filing had been granted. The return reported income taxes of $10,000 and claimed a credit of $4,000 for estimated tax payments. Mr. Carpenter remitted the $6,000 balance of income taxes by check with the income tax return.

    (a) What is the latest date that Mr. Carpenter could file a claim for 1980?

(b) What is the maximum amount of refund payable to Mr. Carpenter on that date?

22. Mr. Baker timely filed individual income tax returns as follows:

	1977	1978	1979
Taxable income	100,000	100,000	100,000
Income taxes paid	50,000	50,000	50,000

On April 15, 1981, Mr. Baker filed an income tax return for 1980 reporting a net operating loss of $200,000. Mr. Baker obtains a tentative carryback refund under Section 6411.

(a) If IRS determines there is no net operating loss for 1980, what is the amount of the deficiencies for 1977 and 1978?

(b) When does the statute of limitations expire on the deficiencies?

Exhibit 2
STATUTE OF LIMITATIONS
ANSWERS

1. (a) 4/15/83, Section 6072(a)

   (b) 5/15/83, Section 6072(b)

   (c) There is no tax assessed against the "partnership" unless it is held to be a corporation. In such case, the statute of limitations expires 3/15/87. Section 6501(g). However, if this is not a small partnership under Section 6231(a)(1)(B), then no income tax may be assessed against the individual partners after 4/15/87 unless there is an extension expressly applicable to partnership items. Section 6229(b)(2).

   (d) 1/03/85, Section 6075(a)

   (e) 4/15/86, Section 6075(b)(1) effective after 12/31/81. The gift tax return is a quarterly return for years subsequent to 1981.

   (f) 4/15/84

   (g) 1/31/84. A case file will generally include both Forms 940 and 941. A statute may be lost if Form 940 is given the same statute of limitations date as a Form 941.

   (h) 9/15/85, Section 1.6072-1(a)

   (i) Mr. I. 4/15/84 + 3 years = 4/15/87
   Mr. R. 4/15/87 + 1 year = 4/15/88
   Mr. S. 4/15/88 + 1 year = 4/15/89

2. (a) 3/15/84, Section 6501(b), Section 6072(b)

   (b) 4/02/84, Section 6501(a)

   (c) 4/02/84; An extension of the filing date does not extend the statute of limitations date.

(d) 10/20/85. I.R.C. §6501(c)(7) now extends the statute of limitations to 60 days after receipt of an amended return.

3. The statute of limitations remains open because no return was deemed filed by taxpayer. Section 6501(b)(3), Section 301.6501(b)-1(c).

4. 8/01/84. The general rule applies.

5. The statute of limitations on estate tax may not be extended. Section 6501(c)(4). Therefore, the Form 872 is invalid. Therefore, the statute date against the estate is 11/12/83. However, there may be transferee liability against the beneficiary until one year later, namely 11/12/84. Section 6901(c)(1).

6. 6/12/84. Section 7502(a)(1), IRM 8(22)50. Hotel Equities Corp., 546 F.2d 725 (CA-7,1976), affirming 65 TC 528 (1975).

7. Each appeals officer should examine all administrative files and review all returns in his or her inventory periodically. Any discrepancies in the dates shown on Form 5573 should be corrected by the appeals officer and the records section. This is an extremely important procedure!

8. A "dummy return" is simply a copy of taxpayer's copy of a return filed. It is not a "substitute for return". Therefore, simply apply the regular statute of limitation rules. If the return is timely filed, then the statute of limitations expires on 4/15/84.

9. No. Form 2848 states at the bottom: "An organization, firm, or partnership may not be designated as a taxpayer's representative."

10. 4/15/86. Section 6501(e)(1)(a). There is a similar exception for estate tax, Form 706, and gift tax, Form 709. Section 6501(e)(2).

11. The statute of limitations expires on 3/15/85. However, Appeals may send a notification letter to inform the taxpayer of the Section 531 adjustment; the law allows

taxpayer up to 60 days to reply to this notification. Section 534(c). It is preferable to mark the inventory card statute date at least 90 days prior to the actual statute date. Alternatively, records may keep a separate control record.

Although it is somewhat inconsistent, a Form 872-A may be used in a Section 531 tax situation. IRM 8233.(13)(8).

12. Generally, the appeals officer should use an 872-A unless taxpayer insists on an 872. IRM 8233.(13)(7).

13. The appeals officer is responsible when the case is in his or her jurisdiction. Many barred deficiency reports have been written for this error. (The Records Section also has responsibility for making a timely assessment.

14. A restrictive consent should be secured when the case is already open on a restrictive consent. In other situations the problem should be discussed with your supervisor and his or her approval given to the restrictive language. IRM 8233.(12).

15. No. If the taxpayer prevails, a deficiency is created in 1981. The general rule is to keep all statutes open. The deficiency arises from the agreed $40 adjustment solely to 1981; it follows that the mitigation provisions under section 1311 are not applicable.

16. June 29, 1984. The 5 days remaining when the statutory notice was issued are added to the 60 days allowable under section 6503(a)(1). The time expires as follows:

April	5
May	31
June	29
Total days remaining	65

Rev. Rul. 66-17, 1966-1, C.B. 272. The statute of limitations does not begin on a Form 870-AD until it is signed by the associate chief.

17. No. If FICA tax is increased by the adjustment to wages, the appeals officer should assess the increase prior to issuance of the statutory notice. Section 6211 definition of "deficiency" does not include FICA taxes. Therefore, section 6503 does not stop the statute of limitations during the 90-day period and the Tax Court proceeding. It should also be noted that the statute of limitations for tip income adjustments is usually open indefinitely as it has not been reported on a filed return (Rev. Rul. 79-39, 1979-1 C.B. 435).

18. This should be done prior to issuance of the statutory notice so that the statute does not expire on the assessment. The Section 6211 definition of deficiency does not include adjustments to withholding. Robert Bergin v. C.I.R., 74 TC 96 (1980), section 6201(a)(3).

19. 9/12/84. Section 6503(a) suspends the statute of limitations for 90 days plus 60 days. These additional 150 days are added to the normal statute date, namely 4/15/84, as follows:

April	15
May	31
June	30
July	31
August	31
September	12
	150

20. 9/13/85. The time remaining on the statute is computed as follows:

		Days
		1
Unexpired days at date S/N issued (so called "tack on" period)		
Additional days pursuant to section 6503(a):	60	
(1) Period of appeals to the Tax Court Decision, section 7481(a)(1) and section 7483	90	
(2) Section 6503(a) additional days		150
Total		151

These additional days are added to the decision date as follows:

April	15
May	31
June	30
July	31
August	31
September	13
Total	151

21

(a) 6/15/84.

(b) $6,000. The maximum refund is the amount paid within the last 3 years plus any valid extensions (none). Section 6511(b)(2)(A).

The estimated tax payments are deemed paid on the due date of the return, 4/15/81. Section 6513(b)(2).

22

(a) $100,000.

(b) 4/15/84. A deficiency may be assessed as long as the loss year is open. Section 6501(h). Incidently, it may be done as a mathematical adjustment - without issuance of a statutory notice. Section 6213(b)(3). Furthermore, the government may examine the carryback year and apply offsets to the allowable net operating loss. Rev. Rul. 81-88, 1981-1 C.B. 585.

* U.S.G.P.O. 1986-491-483/20431